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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-205257

DATE: October 28, 1981

MATTER OF: 3B Building Maintenance Co.

DIGEST:

A bidder's failure to acknowledge an invitation amendment containing a Department of Labor wage rate determination renders the bid nonresponsive. It is not relevant that the bidder never received the amendment, since the contracting agency advises that it sent the amendment to the bidder two weeks before bid opening and there is no suggestion of a deliberate attempt to exclude the bidder from the competition.

3B Building Maintenance Co. protests the General Services Administration's (GSA) rejection of the firm's bid under an invitation for bids for janitorial services. The bid, which was the lowest one received, was rejected as nonresponsive because 3B failed to acknowledge an amendment to the invitation adding a Department of Labor wage rate determination. 3B complains that it never received the amendment.

The protest is summarily denied.

We consistently have held that a bidder's failure to acknowledge an amendment which modifies or adds a wage rate determination may not be waived. The reason is that the Government's acceptance of a bid which does not contain an agreement to pay the appropriate wage rates does not bind the contractor to pay wages to which its employees are entitled, and the Government may not waive the employees' rights to those wages. See Moltzen Electric, Inc., B-201364, April 6, 1981, 81-1 CPD 261.

Moreover, the fact that the bidder may not have received the amendment is not relevant unless the failure was the result of a conscious or deliberate effort by contracting officials to exclude the bidder from the competition. Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2. GSA informally advises that the contracting activity mailed the amendment to 3B on July 29, 1981, two weeks before bid opening, and we have no basis to suspect

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a deliberate attempt by the contracting activity to exclude 3B from the competition. See Jose Lopez & Sons Wholesale Fumigators, Inc., B-200849, February 12, 1981, 81-1 CPD 97.

Accordingly, the bid properly was rejected as non-responsive.

for *Milton J. Fowler*
Comptroller General
of the United States